

**WASHINGTON STATE**  
**B A R A S S O C I A T I O N**

**Board of Governors Special Meeting**  
**Meeting Materials**

**December 14, 2021**  
**Zoom and Teleconference**

# WASHINGTON STATE BAR ASSOCIATION

## MEMO

**To:** WSBA Board of Governors

**From:** Kyle Sciuchetti, WSBA Past-President

**Date:** December 3, 2021

**Re:** Understanding and Shaping the Future of the Washington State Bar Association

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### *Background*

In 2018, the U.S. Supreme Court ruled in *Janus v. AFSCME*<sup>1</sup> that the First Amendment forbids government from requiring their employees to pay union fees. While the decision did not directly address integrated bar associations, it overturned the 1977 decision of *Abood v. Detroit Board of Education*,<sup>2</sup> which had formed the basis for the US Supreme Court's 1990 decision in *Keller v. State Bar of California*.<sup>3</sup> Keller held that attorneys could be compelled to belong to a state bar so long as the mandatory fees were only used for regulation of the profession and serving the legal needs of the state. Without Abood as a foundation, there was concern about the continued viability of Keller. In light of these questions, in March 2019, the Supreme Court convened a workgroup to examine the WSBA structure. The workgroup constituted ten members, chaired by the Chief Justice, who met over the course of 8 months. The workgroup was charged to review and assess the WSBA structure considering (1) recent case law with First Amendment<sup>4</sup> and antitrust implications<sup>5</sup>; (2) recent reorganizations by other state bar associations and/or groups and their reasoning; and (3) the additional responsibilities of the WSBA due to its administration of Supreme Court appointed boards. The group produced a [Report and Recommendation](#) and a minority report. The report concluded to retain an integrated bar structure and the Court accepted that recommendation.

### *Current Problem*

In the years since the structure workgroup concluded its work, lawsuits have been filed in several other states arguing that compelled membership in a bar association violates a bar member's first amendment rights, when an integrated bar association engages in non-germane activities. In 2021, three circuits acknowledged that the U.S. Supreme Court has not decided this issue and the 5<sup>th</sup> Circuit found that the Texas Bar Association could not compel membership if engaged in any non-germane activities. Accordingly, it is appropriate to reexamine the integrated bar structure.

### *Objective*

Develop a process to analyze and recommend to the Washington State Supreme Court whether the bar association should continue in its current structure or change its operations given experiences of other bar associations, updated analysis and recent litigation.

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<sup>1</sup> 138 S.Ct. 2448 (2018)

<sup>2</sup> 431 S.S. 209 (1977)

<sup>3</sup> 496 U.S. 1 (1990)

<sup>4</sup> This referred to the Janus decision.

<sup>5</sup> North Carolina State Bd. of Dental Examiners v. F.T.C., 574 U.S. 494 (2015)

### *Proposed Process Roadmap*

Over the course of the next few months, the Board of Governors will meet to listen to witnesses, hear public testimony, and learn about the history of Janus, Keller, and other court decisions regarding integrated bars. One approach could be to use a project management framework to guide the discussion through the following three phases:

<b>Phase</b>	<b>Goal</b>	<b>Objective</b>
<i>Phase 1: Information Gathering</i>	The goal of this phase is to build a common understanding of the current state and the related challenges.	<ol style="list-style-type: none"> <li>1. Receive updated presentations and information on issues the 2019 Structures Workgroup explored, considering recent case law.</li> <li>2. Review legal cases/arguments that are currently being litigated across the country.</li> </ol>
<i>Phase 2: Ideation</i>	The goal of this phase is to learn from existing bar structures and begin ideation of the potential future state.	<ol style="list-style-type: none"> <li>1. Examine other state bar structures (panel discussion with e.g., Virginia, California, and Texas).</li> <li>2. Explore pros and con of each structure and how to mitigate risk.</li> </ol>
<i>Phase 3: Decision Making Phase</i>	The goal of this phase is to determine what the future looks like and make a recommendation.	<ol style="list-style-type: none"> <li>1. Gather and confirm leadership decision criteria.</li> <li>2. Hold leadership decision workshop capturing issues, follow-up items, and documenting decisions made.</li> </ol>

### *Additional Factors*

- Early in the process, key stakeholders will be identified and invited to engage throughout the process.
- An opportunity to collaborate with the Court, yet to be determined.
- Collaborate with similar bar associations (Oregon State Bar and Idaho State Bar).

### *Next Steps*

Prepare a list of meeting topics, presenters, presentations and issues for the Board of Governors to consider in deciding the desirable structure of the WSBA. The Board of Governors will do this by giving opportunity for public comment, taking into consideration the regulatory role of the bar association, the desirability of an integrated structure and issues affecting access to justice.

A project management framework will form the structure of the meeting and guide the Board of Governors toward a path to make recommendations to the Washington Supreme Court.